

EXHIBIT A



June 21, 2018

Sam Kaplan
Chief Privacy Officer/Chief FOIA Officer
The Privacy Office
U.S. Department of Homeland Security
245 Murray Lane SW
STOP-0655
Washington, D.C. 20528-0655

Jill Eggleston, FOIA Officer/Public Liaison
United States Citizenship and Immigration Services
National Records Center, FOIA/PA Office
P. O. Box 648010
Lee's Summit, MO. 64064-8010

Catrina Pavlik-Keenan, FOIA Officer:
Fernando Pineiro, FOIA Requester Service Center Contact
Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street, SW, Stop 5009
Washington, D.C. 20536-5009

FOIA Officer
U.S. Customs and Border Protection
90 K Street, NW
9th Floor, Mail Stop 1181
Washington, DC 20229

Re: Freedom of Information Act Request — Request for Expedited Response

Dear Mr. Kaplan, Ms. Eggleston, Ms. Pavlik-Kennan, Fernando Pineiro, and CBP FOIA Officer:

This is a request under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), on behalf of Make the Road New York (“MRNY”) for information relating to (a) the Department of Homeland Security’s draft notice of proposed rulemaking titled “Inadmissibility on Public Charge Grounds” that was submitted to the Office of Management and Budget (“OMB”) on March 29, 2018. *See* RIN 1615-AA22, *available at* <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201804&RIN=1615-AA22> (including subsequent versions, the “Proposed NPRM”); and (b) Foreign Affairs Manual (“FAM”), section 9 FAM 302.8 (public charge) rules, as amended January 3, 2018 and March 12, 2018, *available at* <https://fam.state.gov/fam/09fam/09fam030208.html> (“Public Charge FAM Changes”).

We ask that you please direct this request to all appropriate offices and departments.

A. Purpose of Request

The purpose of this request is to obtain information for the public about the Proposed NPRM and Public Charge FAM Changes and their impact on non-citizen and immigrant communities. As an organization that engages in legal advocacy and public education on behalf of such communities, MRNY has an interest in understanding the

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STATEN ISLAND, NY 10302
718 727 1222

LONG ISLAND
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914 948 8466

potential implementation and impact of any proposed rules so as to better inform its work. Because MRNY disseminates policy and educational materials to the public, information obtained from this FOIA request will better enable the public to understand the analyses supporting the Proposed NPRM and the Public Charge FAM Changes and their effect on low-income and immigrant communities.

B. Request for Information Relating to the Proposed NPRM

MRNY requests:

- (1) all emails, communications and analyses related to the Proposed NPRM sent by the Department of Homeland Security ("DHS," including but not limited to subcomponents United States Citizenship and Immigration Services ("USCIS") and USCIS Office of Policy ("USCIS OOP"), Immigration and Customs Enforcement ("ICE") and ICE Office of Policy ("ICE OOP") and U.S. Customs and Border Protection ("CBP")) to the Office of Information and Regulatory Affairs ("OIRA") and/or OMB; and
- (2) any other emails, communications and analyses related to the Proposed NPRM between or among DHS, USCIS, USCIS OOP, ICE, ICE OOP, CBP and/or (a) any part of the Executive Branch; (b) Congressional member or staff, and/or (c) any other person or entity outside the Executive Branch.

C. Request for Information Relating to Public Charge FAM Changes

MRNY requests:

- (1) all documents, including emails, communications and analysis relating to the Public Charge FAM Changes shared by DHS, USCIS, USCIS OOP, ICE, ICE OOP and CBP with the consulates and their staff charged with enforcing the FAM;
- (2) all emails, communications and analyses related to the Public Charge FAM Changes sent by DHS, USCIS, USCIS OOP, ICE, ICE OOP, CBP to OIRA and/or OMB;
- (3) any other emails, communications, and analyses related to the Public Charge FAM Changes between or among DHS, USCIS, USCIS OOP, ICE, ICE OOP, CBP and/or (a) any part of the Executive Branch; (b) any Congressional member or staff, and/or (c) any other person or entity outside the Executive Branch.

D. Format of Production

Please search for responsive records regardless of format, medium, or physical characteristics, and including electronic records. Please provide the requested documents in the following format:

- Saved on a CD, CD-ROM, DVD, hard drive or other hardcopy media;
- In PDF or TIF format wherever possible;
- Electronically searchable wherever possible;
- Each paper record in a separately saved file;
- "Parent-child" relationships maintained, meaning that the Requester must be able to identify the attachments with emails;
- Any data records in native format (i.e. Excel spreadsheets in Excel);
- Emails should include BCC and any other hidden fields;
- With any other metadata preserved.

E. The Requester

Make the Road New York is a non-profit, membership-based 501(c)(3) organization dedicated to informing, engaging, and empowering immigrant, Latino, and working-class communities in New York City. MRNY has more than 22,000 dues-paying members residing in New York City and Long Island. Its mission includes educating the public about civil rights issues affecting working-class and immigrant communities through electronic newsletters,

reports, fact sheets, trainings, curricula, classes, and other educational and informational material. MRNY regularly conducts research and analysis and publishes reports, fact sheets, and other informational material on issues important to the immigrant, Latino, and working class communities it serves. MRNY also disseminates information and analyses on pending and proposed legislation and mobilizes community members to advocate to their legislators, and engages in organizing and public-policy advocacy efforts; these efforts include substantial outreach to policymakers and communication with the media. MRNY frequently releases media statements, and disseminates information about local, state, and national issues to its thousands of members and to the public at large.

F. Expedited Processing

Expedited processing of this request is required because there is a “compelling need” for the information. *See* 5 U.S.C. § 552(a)(6)(E)(i)(I). A “compelling need” may be established where “a failure to obtain requested records on an expedited basis under this paragraph could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.” *Id.* § 552(a)(6)(E)(v)(I). The Proposed NPRM and its vague threat of retroactive application has created an informational void. Likewise, the Public Charge FAM Changes leave both non-citizens exiting the U.S. and re-entering through consular processing as well as those appearing at consular processing in the hopes of uniting with family in the U.S. without the information they need. This void poses a real and imminent threat to the lives of immigrants and to their U.S. citizen children --including numerous MRNY members -- who are forgoing the use of crucial healthcare and nutritional assistance benefits for fear of repercussions to their immigration statuses. If this informational void has not already caused the death or serious injury of a person who did not seek healthcare, it certainly will. Indeed, recent and widely disseminated public health analyses suggest that proposed changes could result in “higher rates of poor birth outcomes -- including higher rates of infant and maternal mortality -- as well as poorer health, education, and financial outcomes for children of all ages.” *See* Sharon Parrott, Shelby Gonzales, & Liz Schott, “Trump Public Charge Rule Would Prove Particularly Harsh for Pregnant Women & Children, Center for Budget and Policy Priorities (May 1, 2018).¹

A “compelling need” may also exist where there is an “urgency to inform the public concerning actual or alleged Federal Government activity,” and the requesting party is “primarily engaged in disseminating information.” *Id.* § 552(a)(6)(E)(v)(II). There is an urgent need to inform the public of the policies, analyses, and decision-making undergirding the Proposed NPRM and Public Charge FAM Changes: non-citizens and their U.S. citizen children must be free to utilize the crucial benefits for which they are eligible, and the public must be able to meaningfully engage with the political and legal issues surrounding these policies, to be equipped to engage in the notice and comment process and otherwise advise clients on the final rules. It is clear that public interest in this information is extremely high, as it is a subject of widely-disseminated press reports and hotly debated reporting and opinion writing in leading news outlets throughout the country. *See, e.g.,* Nick Miroff, “Trump Proposal would penalize immigrants who use tax credits and other benefits,” *Washington Post* (March 28, 2018)²; Christina Jewett, Melissa Bailey, & Paula Andalo, “Under Trump proposal, lawful immigrants might be inclined to shun benefits,” *Washington Post* (May 11, 2018)³; Emily Baumgaertner, “Spooked by Trump proposals, immigrants shun public nutrition services,” *New York Times* (March 6, 2018)⁴; Tara Duggan, “Immigrants’ fear cited in declining food stamp use in SF,” *San Francisco Chronicle* (May 17, 2017)⁵; Maria Benvenuto, “Immigration changes could lead to drop children’s health coverage,” *National Catholic Reporter* (May 31, 2018).⁶

¹ Available at <https://www.cbpp.org/research/poverty-and-inequality/trump-public-charge-rule-would-prove-particularly-harsh-for-pregnant>

² Available at https://www.washingtonpost.com/world/national-security/trump-proposal-would-penalize-immigrants-who-use-tax-credits-and-other-benefits/2018/03/28/4c6392e0-2924-11e8-bc72-077aa4dab9ef_story.html?noredirect=on&utm_term=.99869ce33add.

³ Available at https://www.washingtonpost.com/national/health-science/under-trump-proposal-lawful-immigrants-might-be-inclined-to-shun-health-benefits/2018/05/11/d17c0aa4-54fb-11e8-a6d4-ca1d035642ce_story.html?utm_term=.4068e1741117

⁴ Available at <https://www.nytimes.com/2018/03/06/us/politics/trump-immigrants-public-nutrition-services.html>

⁵ Available at <https://www.sfchronicle.com/food/article/Fewer-eligible-San-Franciscans-taking-advantage-11151203.php>

⁶ Available at <https://www.ncronline.org/news/justice/immigration-changes-could-lead-dropped-childrens-health-coverage/>

As discussed in Part E of this request, MRNY is an organization primarily engaged in the dissemination of information.

G. Fee Waiver

The Requester is entitled to a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k) on the grounds that “disclosure of the requested records is in the public interest because it is likely to contribute significantly to the public understanding of the activities or operations of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 6 C.F.R. § 5.11(k) (records furnished without charge if the information is in the public interest, and disclosure is not in the commercial interest of institution). *See, e.g., McClellan Ecological v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987). The Requester meets the requirements of 6 C.F.R. § 5.11(k) because the subject of the request concerns the operations or activities of the government, and the disclosure of the information is likely to contribute to a significant public understanding of government operations or activities.

As described in above, the Requester is a non-profit organization dedicated to civil rights, human rights, and immigrant rights, and has a proven track-record of compiling and disseminating information and reports to the public about government functions and activities, including the government’s record and position on noncitizens’ rights and policy matters. The Requester has undertaken this work in the public interest and not for any private commercial interest. Similarly, the primary purpose of this FOIA request is to obtain information to further the public’s understanding of federal immigration actions and policies, and their effects on alien and immigrant communities. Access to this information is crucial for the Requester and the communities it serves to evaluate such actions and their potential detrimental effects. Requester is an advocacy organization that publishes reports, hosts frequent community education forums, and engages in litigation. Disclosure in this case therefore meets the statutory criteria, and a fee waiver would fulfill Congress’ legislative intent in amending FOIA. *See Judicial Watch Inc. v. Rossotti*, 326 F.3d 1309 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers of noncommercial requesters.’”).

In the alternative, we request a limitation of processing fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) (“[F]ees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by . . . a representative of the news media.”); *see* 6 C.F.R. § 5.11(d). If no fee waiver is granted and the fees exceed \$250.00, please contact the Requester’s undersigned counsel to obtain consent to incur additional fees.

H. FOIA Improvement Act of 2016

We call your attention to the bipartisan FOIA Improvement Act of 2016, which codifies a FOIA “presumption of openness, making it a permanent requirement for agencies.”⁷ Following these amendments, an agency’s determination that a record satisfies a FOIA exemption, such as the exemption for inter-agency deliberations, is not sufficient to justify withholding the record. Instead, an agency may withhold a record “only if – (1) the agency reasonably foresees that disclosure would harm an interest protected by an exemption described in subsection (b); or (II) the disclosure is prohibited by law.” *See* 5 U.S.C. § 552(a)(8)(A). In addition, the amendments require that agencies “(I) consider whether partial disclosure of information is possible whenever the agency determines that a full disclosure of a requested record is not possible; and (II) take reasonable steps necessary to segregate and release nonexempt information.” *Id.*

I. Certification & Conclusion

The Requester certifies that the above information is true and correct to the best of the Requester’s knowledge. *See* 6 C.F.R. § 5.5(d)(3). If this Request is denied in whole or in part, the Requester asks that you justify all deletions by reference to specific exemptions of FOIA. The Requester expects you to release all segregable portions of otherwise exempt material, and reserves the right to appeal a decision to withhold any records or to deny the within application for

⁷ *See* H. CMTE. ON OVERSIGHT & GOV’T REFORM, FOIA OVERSIGHT AND IMPLEMENTATION ACT OF 2016, H.R. Doc. No. 114-391 (Jan. 6, 2016).

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waiver of fees.

If you have any questions regarding the processing of this request, please do not hesitate to contact Sienna Fontaine, Esq., at (718) 565-8500 ext. 4612. Please direct all applicable Records to: 301 Grove Street, Brooklyn, NY 11237. Thank you for your prompt attention to this matter.

Sincerely,

 6/21/18

Rebecca Telzak
Make the Road New York